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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMAR MENESE,

Defendant and Appellant.

B286070

(Los Angeles County
Super. Ct. No. MA 071315)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Andrew E. Cooper, Judge. Affirmed and
remanded with directions.

Maggie ShROUT, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Zee Rodriguez and Daniel C. Chang, Deputy
Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Jamar Meneese of multiple offenses for his involvement in a home invasion robbery in which he pistol-whipped three different victims. In this appeal, he contends that there was insufficient evidence to sustain his conviction for aggravated mayhem (Pen. Code, § 205)¹ because the evidence did not show that he specifically intended to inflict a permanent disfiguring injury on one of his victims. He also argues that the trial court violated his right to due process by allowing the prosecutor to cross-examine him regarding specific details of prior crimes. We affirm, but we remand the case to the trial court for resentencing in light of the enactment of Senate Bill No. 620 (2017-2018 Reg. Sess.) (Senate Bill No. 620) and Senate Bill No. 1393 (2017-2018 Reg. Sess.) (Senate Bill No. 1393).

FACTS AND PROCEEDINGS BELOW

This case began when Shaquon C. met Craig T. on a dating website and traveled from Seattle, Washington, to visit him at his home in Palmdale. They took a photo of themselves lying on a bed, surrounded by a large amount of cash. Marina Brown was an acquaintance of Shaquon C. and went with her to Craig T.'s house on two occasions before the robbery. She had seen safes in Craig T.'s bedroom and concluded that that was where he kept his money.

Brown was also a friend of Meneese. The two of them, along with two other codefendants in this case, Erik Lyndall Williams and Allana Shepard, saw the photograph in February 2016 and decided to drive from Seattle to Palmdale to rob Craig T. The four raised enough money to pay for gas for the trip, and Meneese obtained two guns.

When the group arrived in Craig T.'s neighborhood on the night of February 16, 2016, they parked at a distance and

¹ Unless otherwise specified, subsequent statutory references are to the Penal Code.

walked toward his house. Meneese suggested that Brown knock on the front door because Craig T. had met Brown before and would be more likely to open the door for her. Brown knocked on the door while the other three remained just behind.

Craig T. was in the living room with a man named Tyrell W., a woman named Jessica T., and a third person. Jessica T. went to answer the door, and Brown asked for Craig T. Jessica T. said, "Hold on." But before she could go to get Craig T., Meneese barged in and asked, "Where is the money?" Jessica T. said, "What?" Meneese hit her on the head with the pistol he was holding. Meneese pointed the gun at the people in the living room and told them to get down. He grabbed Jessica T. by her ponytail, dragged her through the living room and into Craig T.'s bedroom, and told her to open the safe. Craig T. kept two safes in the closet of his bedroom. Jessica T. told him that she did not know the code to open them. Meneese pistol-whipped her in the mouth, then dragged her back into the living room and threw her on top of a vacuum cleaner. Jessica T. suffered a broken jaw and lost three teeth as a result of the pistol-whipping.

Meneese asked Craig T. for the safe code, and when he refused to answer, Meneese hit him on the head with his pistol. Craig T. was rendered unconscious by the attack.

Another resident of the house, Nelson V., was lying down in his bedroom at the time of the robbery. He saw someone open his bedroom door quickly, then shut it again. Nelson V. got up and opened the door to investigate, at which point he saw Meneese in the living room looking through Craig T.'s desk drawers. Meneese looked at Nelson V. and said, "Where the fuck did you come from?" He then grabbed Nelson V. by the shirt and pistol-whipped him several times on the back of his head. Nelson V. fell down to the ground, and Meneese forced him to crawl on all fours toward where the other victims were lying in the living room.

Brown left the house to get the car. At around the same time, one of Craig T.'s roommates, a woman named Ozaina B., was returning to the house in her Mercedes. At the same time, Meneese, Williams, and Shepard exited the house. Williams was carrying a safe in his hands. The three robbers crossed the street directly in front of Ozaina B.'s Mercedes and went toward Brown's car. Ozaina B. recognized the car from an earlier occasion when Brown visited Craig T. Ozaina B. backed the car into the driveway of the house, and Meneese pointed the gun at her, then got into Brown's car.

The robbers drove away, and Ozaina B. followed them in her Mercedes. Ozaina B. called 911 to report the crime, and while she was on the phone, the robbers managed to outrun her. The robbers ultimately found about \$100 in the safe. They also stole some additional cash their victims were carrying, as well as clothing, cellular phones, jewelry, and some laptops and tablet computers.

Later that evening, Craig T. showed a police detective surveillance video of the robbery taken from a camera in his bedroom and showed the detective photos of Brown, who he believed was involved in the robbery. Ozaina B. also provided the detective with a photo of Brown and Williams. The detective traveled to Washington in April and interviewed Brown. Brown admitted her involvement in the robbery and identified Meneese and the other coconspirators.

Jessica T., Nelson V., and Ozaina B. all identified Meneese from six-pack photo arrays as one of the participants in the robbery, and, in the case of Jessica T. and Nelson V., as the man who had pistol-whipped them. In addition, cellular phone records showed that Meneese's phone traveled south from the Seattle area on the day before the robbery and communicated with a tower approximately 200 yards from Craig T.'s house at 6:30 p.m. on the night of the robbery. After a four-hour gap during which the cellular phone was not in use, the phone then

communicated with cellular towers in Mojave before continuing toward Las Vegas. The other robbers' phones appeared to follow the same path as Meneese's during this time period.

Meneese testified on his own behalf at trial. He claimed that he drove to Southern California for a vacation in February 2016, and that he traveled with his girlfriend in a separate car from the one used by Brown, Williams, and Shepard. According to Meneese, they stopped in Palmdale so that Williams could buy marijuana. Meneese and his girlfriend parked around the corner from Craig T.'s house and waited for Williams. After 15 to 20 minutes, Meneese saw his friends drive away, with Ozaina B.'s Mercedes in pursuit. During cross-examination, the prosecutor played recordings of jailhouse phone calls between Meneese and his child's mother. During one call, Meneese told his child's mother that he had been in Las Vegas from February 14 to 17, and denied that he had been in Southern California at that time. The robbery took place on the evening of February 16.

An information charged Meneese with four counts of home invasion robbery (§§ 211, 213, subd. (a)(1)(A)), one count of aggravated mayhem (§ 205), two counts of torture (§ 206), two counts of kidnapping to commit robbery (§ 209, subd. (b)(1)), six counts of assault with a semiautomatic firearm (§ 245, subd. (b)), two counts of felony false imprisonment by violence (§§ 236, 237, subd. (a)), two counts of first degree burglary (§ 459), and six counts of assault with a firearm. (§ 245, subd. (a)(2).) The information alleged that Meneese had suffered two prior strike convictions (§§ 667, subd. (d), 1170.12, subd. (b)), as well as two prior serious felony convictions (§ 667, subd. (a)) and one prison prior. (§ 667.5, subd. (b).) As to several of the counts, the information alleged that Meneese caused great bodily injury (§ 12022.7, subd. (a)), and that he personally used a firearm. (§§ 12022.5, subd. (a), 12022.53, subd. (b).)

The trial court dismissed the two kidnapping counts on a judgment of acquittal (§ 1118.1) and dismissed the charges of assault with a semiautomatic weapon (§ 245, subd. (b)), felony false imprisonment (§ 236), and residential burglary on the People's motion.

A jury found Meneese guilty of all four counts of home invasion robbery, both counts of torture, the count of aggravated mayhem, and two counts of assault with a firearm. The jury also found the firearm and great bodily injury allegations true. With respect to the remaining counts of assault with a firearm, the jury convicted Meneese of the lesser-included offense of misdemeanor assault. (§ 240.) The court found true all of the allegations of Meneese's prior convictions.

The court imposed a sentence of 14 years to life, plus 15 years in enhancements each for Meneese's convictions of aggravated mayhem (count 4) and torture (count 6). The court stayed the sentence pursuant to section 654 for the other count of torture (count 5). In addition, the court sentenced Meneese to the high term of nine years, doubled for one prior strike, plus 10 years for a gun enhancement and three years for a great bodily injury enhancement, for a total of 31 years for the home invasion robbery (count 18). The court imposed an additional 7 years 4 months, as a subordinate term for the second count of home invasion robbery (count 2). The court added one year for each of the two misdemeanor assault convictions, plus five more years for a serious felony conviction pursuant to section 667, subdivision (a)(1). The court stayed the sentence on the additional charges pursuant to section 654.

DISCUSSION

Meneese raises several contentions on appeal. First, he argues that the evidence did not show that he specifically intended to permanently disable or disfigure Jessica T., and consequently that there was insufficient evidence to sustain his conviction for aggravated mayhem. (§ 205.) Next, he contends

that the trial court violated his right to due process by allowing the prosecutor to cross-examine him regarding the details of his prior convictions. Finally, he contends that we must remand the case for resentencing in light of Senate Bill Nos. 620 and 1393. We agree with Meneese on the last point, but we otherwise affirm.

I. Sufficiency of Evidence of Aggravated Mayhem

Meneese contends that there was insufficient evidence to support his conviction for aggravated mayhem. (§ 205.) In particular, he argues that there was no evidence at trial to allow a reasonable jury to conclude that he “intentionally cause[d] permanent disability or disfigurement of another human being” (*ibid.*) when he pistol-whipped Jessica T. We are not persuaded.

“When reviewing a challenge to the sufficiency of the evidence, we ask ‘ “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” ’ (*People v. Edwards* (2013) 57 Cal.4th 658, 715 . . . , quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 319) Because the sufficiency of the evidence is ultimately a legal question, we must examine the record independently for ‘ “substantial evidence—that is, evidence which is reasonable, credible, and of solid value” ’ that would support a finding beyond a reasonable doubt. (*People v. Boyce* (2014) 59 Cal.4th 672, 691.)” (*People v. Banks* (2015) 61 Cal.4th 788, 804.)

Meneese concedes that Jessica T. suffered “permanent disability or disfigurement” (§ 205) as a result of his attack on her. He argues, however, that the evidence did not show that he acted with the specific intent to maim. Consequently, he contends that his conviction must be reduced to simple mayhem (§ 203), which is essentially a general-intent version of the same offense. (See *People v. Park* (2003) 112 Cal.App.4th 61, 64 (*Park*).)

Because the question of specific intent requires determining the defendant's state of mind when committing the crime, the relevant evidence " 'is almost inevitably circumstantial . . . ' [Citation.] A jury may infer a defendant's specific intent from the circumstances attending the act, the manner in which it is done, and the means used, among other factors." (*People v. Ferrell* (1990) 218 Cal.App.3d 828, 834 (*Ferrell*)). Specific intent " ' "may not be inferred solely from evidence that the injury inflicted actually constitutes mayhem; instead, there must be other facts and circumstances which support an inference of intent to maim rather than to attack indiscriminately." ' " (*People v. Assad* (2010) 189 Cal.App.4th 187, 195 (*Assad*)). In addressing the mental state required for aggravated mayhem, courts have focused on the nature of the attack. " 'Evidence that shows no more than an "indiscriminate attack" is insufficient to prove the required specific intent.' " (*Ibid.*) On the other hand, "a controlled and directed attack" to a specific part of the victim's body is sufficient. (*Ferrell, supra*, 218 Cal.App.3d at p. 835.)

Thus, in *People v. Campbell* (1987) 193 Cal.App.3d 1653, the defendant attacked his victim with a brick and screwdriver and partially tore off the victim's ear. (*Id.* at p. 1668.) The court held that there was sufficient evidence of specific intent to maim because the defendant "limited the amount of force he used with the screwdriver rather than stabbing with his full force, and limited the scope of the attack with the brick to the head and face, rather than randomly attacking [the victim]'s body." (*Ibid.*)

Courts have also focused on the amount of force directed at a specific part of the victim's body. In *People v. Quintero* (2006) 135 Cal.App.4th 1152, overruled on other grounds, as noted in *People v. Poisson* (2016) 246 Cal.App.4th 121, 125, the court upheld a conviction of aggravated mayhem in part because the defendant used "deliberate uppercut motions to slash [the victim's] face many times with a retractable[-]bladed

knife. This action gave his blows more force and thus the greater ability to inflict serious injury.” (*People v. Quintero*, *supra*, 135 Cal.App.4th at p. 1163.) Similarly, in *Park*, *supra*, 112 Cal.App.4th 61, the court noted that the defendant “attacked using [a] steel knife-sharpener in a throwing motion by bringing the weapon from behind his head and over his shoulder. This action gave his blows more force and therefore gave him a greater ability to inflict serious injury than if he had simply held the sharpener in front of him and tried to jab or stab” the victim. (*Id.* at p. 69.)

Under this standard, the evidence in this case was sufficient to support a conviction for aggravated mayhem. Meneese did not attack Jessica T. indiscriminately, but rather focused the attack on her head and, in particular, her mouth. Furthermore, he used a pistol to strike with enormous force, and after inflicting a specific disfiguring injury, he stopped and did not continue attacking her in other ways. A jury, presented with this evidence, could reasonably conclude that Meneese acted with the specific intent to disable or disfigure.

Meneese argues that his conviction cannot stand because the evidence showed that he attacked Jessica T. with the goal not to maim her, but to force her to give him the code required to open Craig T.’s safes. We do not see any reason why Meneese could not have acted with both intentions simultaneously. In other words, even if his primary purpose in attacking Jessica T. was to obtain the code to the safes, he also could have specifically intended to disfigure her with his attack. Nothing in the case law suggests that a defendant must be motivated solely by a desire to maim in order to be guilty of aggravated mayhem. Under the deferential standard we apply to challenges to the sufficiency of the evidence, we may not overturn Meneese’s conviction.

II. Cross-Examination Regarding Prior Convictions

Meneese contends that the trial court violated his state and federal right to due process by allowing the prosecutor to cross-examine him regarding details of the events for which he was previously convicted of burglary and assault. We need not decide whether the court erred by allowing this questioning because any error was harmless under any standard of review.

Prior to trial, the People filed a motion in limine seeking to introduce evidence of a prior incident for which Meneese was convicted of burglary and assault. In the prior incident, Meneese received assistance from Williams and Shepard, two of his accomplices in this case. Shepard knocked on the door and asked to see the victim, claiming she was the victim's friend. When the victim came to the door, Meneese rushed inside and struck the victim on the mouth. The two then fled in a car driven by Williams.

The prosecutor argued that the prior acts were relevant to the case because they showed that Meneese acted according to a common plan or scheme in both cases. (See Evid. Code, § 1101, subd. (b).) The trial court disagreed and excluded the evidence on the ground that the prior crime was insufficiently similar to the current one. Although Meneese used a woman in both instances as a ruse to gain entry to a location, the cases were otherwise different. In the prior incident, Meneese had only one accomplice who entered the home with him, rather than three, his purpose was domestic violence rather than theft, and he did not pistol-whip his victims. For this reason, the court held that the potential prejudice against Meneese outweighed the probative value of the evidence. (See Evid. Code, § 352.)

When Meneese elected to testify in his own defense, the trial court allowed the People to impeach him by asking about his convictions for burglary and assault, as well as one other prior conviction. During cross-examination, the prosecutor

began asking Meneese, “In that 2014 incident, that’s where you punched out—” before defense counsel interrupted with an objection. The trial court ruled that the People would be allowed to ask Meneese whether he committed prior crimes with the same codefendants because “[i]t is relevant to the relationships.” In response to subsequent questions, Meneese admitted that in the prior incident, Meneese and Shepard planned for Shepard to knock on the door to gain access to the house, and that Williams drove the two of them away afterward.

Meneese argues that the trial court violated his right to due process by allowing cross-examination into the details of his prior offense. He points out that, when using a prior conviction to impeach a witness, “‘the prosecuting attorney is not permitted to delve into the details and circumstances of the prior crime.’” (*People v. McClellan* (1969) 71 Cal.2d 793, 809.) Instead, the prosecutor may ask only about items that “would appear on the face of the record of judgment.” (*Ibid.*)

We agree with Meneese that the prosecutor’s questioning exceeded those limits. It does not follow, however, that the admission of the testimony constituted reversible error. “The rationale for the rule confining the nature and extent of impeachment with prior convictions to the name, type, date, and place of conviction is that a witness may not be impeached on the basis of specific instances of conduct tending to show a trait of the witness’s character.” (*People v. Ardoin* (2011) 196 Cal.App.4th 102, 120.) In this case, the prosecutor’s questioning did very little to call into question Meneese’s character. The jury had already heard that Meneese was previously convicted of assault. A brief mention that Meneese “punched out” someone during the course of the incident would not have added much to inflame the jury against him. The prosecutor’s additional questioning regarding the incident was limited to the names of Meneese’s accomplices and the fact that Shepard knocked on the door in order to gain entry. These

details alone could not have convinced the jury that Meneese had a propensity to bad acts.

Furthermore, the evidence against Meneese was overwhelming. In addition to the testimony by Meneese's codefendant Brown naming Meneese as the driving force behind the robbery, three of the victims identified Meneese as the perpetrator. Cellular tower evidence showed that Meneese traveled along with the other codefendants south from Washington to Palmdale at the time of the robbery. In contrast, no evidence corroborated his story that he traveled in a second car separate from the others. Indeed, his recorded jailhouse phone calls, in which he claimed he was in Las Vegas at the time of the robbery, contradicted his trial testimony. The brief testimony regarding Meneese's prior actions could not have made a difference in the jury's deliberations, and the admission of that evidence was harmless beyond a reasonable doubt. (See *Chapman v. California* (1967) 386 U.S. 18, 24.)

III. Resentencing under Senate Bill Nos. 620 and 1393

Meneese contends that we must remand his case to the trial court in light of two laws that have become effective after his initial sentencing but before his case became final. Senate Bill Nos. 620 and 1393 both give trial courts discretion that they previously did not have to impose more lenient sentences. The Attorney General concedes that these laws apply retroactively to Meneese's case, and that a remand is appropriate. We agree.

A. Senate Bill No. 620

In October 2017, the Governor signed into law Senate Bill No. 620. The bill amended sections 12022.5 and 12022.53, which define enhancements for defendants who personally use a firearm in the commission of certain felonies. Under Senate Bill No. 620, "[t]he court may, in the interest of justice pursuant to [s]ection 1385 and at the time of sentencing, strike or dismiss

an enhancement otherwise required to be imposed by this section.” (Sen. Bill No. 620, §§ 1 & 2, amending §§ 12022.5, subd. (c), 12022.53, subd. (h).) Prior to the enactment of Senate Bill No. 620, these enhancements were mandatory, and the trial court lacked the authority to strike or dismiss them. (See, e.g., *People v. Kim* (2011) 193 Cal.App.4th 1355, 1362–1363, citing former § 12022.53, subd. (h).)

The trial court sentenced Meneese on November 1, 2017, after the Governor had signed Senate Bill No. 620, but before the law became effective. (See *People v. Hurlic* (2018) 25 Cal.App.5th 50, 54 [the Governor signed law on October 11, 2017 to become effective January 1, 2018].) The court imposed seven enhancements on Meneese’s sentence pursuant to section 12022.53, subdivision (b), and two enhancements pursuant to section 12022.5, subdivision (a), for personal use of a firearm in the commission of several of the charges of which he was convicted.

Because nothing in the law suggests the Legislature intended it to apply prospectively only, the change in the law applies retroactively to those like Meneese whose sentences were not final at the time Senate Bill No. 620 became effective. (See *People v. Woods* (2018) 19 Cal.App.5th 1080, 1089–1091; *People v. Robbins* (2018) 19 Cal.App.5th 660, 678–679.) A remand for resentencing is required unless “the record contains a clear indication that the court will not exercise its discretion in the defendant’s favor.” (*People v. McDaniels* (2018) 22 Cal.App.5th 420, 427.) Meneese contends that we must therefore remand the case to the trial court to allow it an opportunity to exercise its discretion regarding the enhancement. The Attorney General concedes that there is no clear indication in the record of whether the court would have exercised its discretion, and they, therefore, agree that remand is appropriate in this case. We agree with both parties.

B. Senate Bill No. 1393

Senate Bill No. 1393, which the Governor signed into law on September 30, 2018, and which became effective January 1, 2019, also gives trial courts discretion to impose more lenient sentences than were previously authorized. Under existing law, five-year enhancements under section 667, subdivision (a)(1), for defendants “convicted of a serious felony who previously ha[d] been convicted of a serious felony” are mandatory. (See § 1385, subd. (b).) Senate Bill No. 1393 amends section 1385 by deleting subdivision (b), which forbids trial courts “to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under [s]ection 667.”

Meneese’s sentence included four enhancements pursuant to section 667, subdivision (a)(1), for prior serious felonies. He contends that Senate Bill No. 1393, like Senate Bill No. 620, applies retroactively to defendants whose cases are not yet final. The Attorney General concedes the point, and we agree. For the same reasons that Senate Bill No. 620 applies retroactively, “it is appropriate to infer, as a matter of statutory construction, that the Legislature intended Senate Bill [No.] 1393 to apply to all cases to which it could constitutionally be applied, that is, to all cases not yet final when Senate Bill [No.] 1393 becomes effective on January 1, 2019.” (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973 (*Garcia*).)

DISPOSITION

The conviction is affirmed. The matter is remanded to the trial court to determine whether to strike the enhancements under Penal Code sections 12022.53, subdivision (b), 12022.5, subdivision (a), and 667, subdivision (a)(1), and if the enhancements are stricken, to resentence defendant.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

CURREY, J.*

* Associate Justice of the Court of Appeal, Second Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.